

July 14, 2010

Robert Marchant  
Senate Chief Clerk  
B20 Southeast, State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Patrick Fuller  
Assembly Chief Clerk  
Room 401  
17 West Main Street  
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE  
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 10-039

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

Aaron Olver  
Secretary

July 14, 2010

Senator Fred Risser  
President of the Senate  
Room 220 South, State Capitol  
Madison, Wisconsin 53707

Representative Michael Sheridan  
Speaker of the Assembly  
Room 211 West, State Capitol  
Madison, Wisconsin 53708

Dear Senator Risser and Representative Sheridan:

### **NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM**

CLEARINGHOUSE RULE NO.: 10-039

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
  - a) Rule Report.
  - b) Public Hearing Attendance Record.
  - c) Public Hearing Comment and Agency Response Form.
  - d) Legislative Council Rules Clearinghouse Report.
  - e) Response to Legislative Council Rules Clearinghouse Report.
  - f) Fiscal Estimate.
  - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

Aaron Olver  
Secretary

July 14, 2010

Bruce Hoesly, Code Editor  
1 East Main Street, Suite 200  
Madison, Wisconsin 53703

Dear Mr. Hoesly:

## NOTIFICATION OF RULE REFERRAL

This letter is to notify you that pursuant to section 227.19, Stats., the Department of Commerce has referred:

CLEARINGHOUSE RULE NO.: 10-039

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

to the presiding officers of the Senate and Assembly of the Legislature for referral to the appropriate standing committees for Legislative review.

Respectfully submitted,

Aaron Olver  
Secretary

# RULE REPORT

## Department of Commerce

Clearinghouse Rule No.: 10-039

Rule No.: Chapter Comm 5

Relating to: Building Contractor Registration

*Contact person for substantive questions:*

Name James Quast

Title Program Manager

Telephone Number 608-266-9292

*Contact person for internal processing:*

Name Norma Sampson

Title Communications Specialist

Telephone Number 608-267-7907

1. Basis and purpose of the proposed rule.

The basis of the proposed rules are sections 101.02 (1) and 101.147, Stats., as affected by 2009 Wisconsin Act 28. The purpose of the proposed rules is to clarify and revise the requirements and definitions in section Comm 5.30 relating to Building Contractor Registration as mandated by 2009 Wisconsin Act 28.

The definition of "construction business" has been broadened to include additional trades that are regulated by departmental codes. The proposed rules require the registration of trades and businesses that construct, install or alter mechanical equipment and devices such as boilers, gas systems, piping, mechanical refrigeration systems serving a building or structure. In addition, the proposed rules expand the registration requirement to those trades or businesses involved in the construction, installation or alteration of permanent devices or structures regulated under the amusement rides code and the sanitation code. The proposed rules create administrative procedures and a forfeiture process for those persons or entities doing construction- or installation-related work without a registration number.

In addition, the proposed rules consolidate two types of weld tester certifications into one category.

2. How the proposed rule advances relevant statutory goals or purposes.

Under chapters 101 and 145 of the Wisconsin Statutes, the Department of Commerce protects public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment, public swimming pools and water attractions and adopts rules that establish uniform, statewide standards for the construction of one- and 2-family dwellings.

The construction trades and equipment installers share a responsibility with owners and designers to ensure that the buildings and equipment relative to the respective trade's work, do not pose risk to public safety and health.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No substantive changes have been made.

# FINAL REGULATORY FLEXIBILITY ANALYSIS

## Department of Commerce

CLEARINGHOUSE RULE NO.: 10-039

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

☒ Final regulatory flexibility analysis not required. (Statement of determination required.)

Pursuant to s. 227.19 (3m), Stats., the Department of Commerce has determined that the proposed rules to update chapter Comm 5 will not have a significant impact on a substantial number of small businesses.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

3. Nature and estimated cost of preparation of any reports by small businesses.
4. Nature and estimated cost of other measures and investments required of small businesses.
5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.
6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

# RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

## Department of Commerce

CLEARINGHOUSE RULE NO.: 10-039

RULE NO.: Chapter Comm 5

RELATING TO: Building Contractor Registration

Agency contact person for substantive questions.

Name: James Quast

Title: Project Manager

Telephone No. 608-266-9292

Legislative Council report recommendations accepted in whole.

☐ Yes

☒ No

1. Review of statutory authority [s. 227.15(2)(a)]

- a. ☐ Accepted
- b. ☐ Accepted in part
- c. ☒ Rejected
- d. ☒ Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

- a. ☐ Accepted
- b. ☒ Accepted in part
- c. ☐ Rejected
- d. ☒ Comments attached

*(Continued on reverse side)*

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. ☐ Accepted
  - b. ☐ Accepted in part
  - c. ☐ Rejected
  - d. ☐ Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. ☐ Accepted
  - b. ☒ Accepted in part
  - c. ☐ Rejected
  - d. ☒ Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. ☒ Accepted
  - b. ☐ Accepted in part
  - c. ☐ Rejected
  - d. ☐ Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. ☐ Accepted
  - b. ☐ Accepted in part
  - c. ☐ Rejected
  - d. ☐ Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. ☐ Accepted
  - b. ☐ Accepted in part
  - c. ☐ Rejected
  - d. ☐ Comments attached



## **COMMENTS ON LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT**

Clearinghouse Rule No. 10-039

Rule No.: Chapter Comm 5

Relating to: Building Contractor Registrations

### **1. Statutory Authority**

Section 101.147, Stats., directs the department to develop rules for the registration of construction contractors. The statutes do not define or identify the construction contractors to be covered by the law or the administrative rules. In addition, nothing in s. 101.147, Stats., exempts or acknowledges construction/building contractors who are already required to obtain and hold specific or specialty credentials relating to their line of building/construction work. Examples of the required specialty contractor credentials include HVAC contractors, dwelling contractors and electrical contractors. On the face of it, these specialty contractors also fall under the scope of s. 101.147, Stats. The department has chosen not to require businesses to acquire an addition contractor business registration if the business already holds one of the specialty contractor credentials issued by the department. In light that any and all building/construction contractors fall under the scope of s. 101.147, Stats., the department deems it appropriate that the administrative forfeiture provisions also apply across the board to all the building/construction contractors whether the business holds a generic registration or a specialty credential.

### **2. Form, Style and Placement in Administrative Code**

a. Pursuant to s. 227.14 (2) (a) 2., Stats., the summary has been revised to clarify that the administrative forfeitures are applicable the 10 other types of credentials that are deemed equivalent building contractor registrations. See comment also under #1.

### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The department believes that the statutory references cited with each of the 10 credential types is sufficient. This type of statutory reference is similar to the administrative forfeitures pertaining to plumbing licensing violations.